

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL SWANSON,

Petitioner,

v.

ROBERT WERLINGER, Warden,
Federal Correctional Institution – Oxford,

Respondent.

ORDER

10-cv-556-wmc

On April 29, 2011, this court dismissed the habeas corpus petition filed by the petitioner Michael Swanson, who sought relief from his sentence under 28 U.S.C. § 2241. The United States Court of Appeals for the Seventh Circuit vacated this court's dismissal order and remanded the case for reconsideration under *Brown v. Rios*, 696 F.3d 638 (7th Cir. 2012). Swanson has filed a brief and the government has filed a response. Swanson has also filed a motion for appointment of counsel (dkt. #47), requests an extension of time to file a reply (dkt. #48) and seeks leave to supplement his brief with additional authority. (Dkt. #49). The court will grant Swanson's request for an extension to reply and to provide additional authority, but will deny his motion for appointment of counsel for reasons set forth briefly below.

Habeas corpus proceedings in federal court are civil actions for which there is no absolute constitutional right to the assistance of counsel. *See, e.g., Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further."). A federal habeas corpus court may appoint counsel for a financially eligible petitioner where "the interests of justice so

require.” 18 U.S.C. § 3006A(g); *Johnson v. Chandler*, 487 F.3d 1037, 1038 (7th Cir. 2007). Appointment of counsel in this context is discretionary “unless denial would result in fundamental unfairness impinging on due process rights.” *Wilson v. Duckworth*, 716 F.2d 415, 418 (7th Cir. 1983) (quoting *LaClair v. United States*, 374 F.2d 486, 489 (7th Cir. 1967)); *Winsett v. Washington*, 130 F.3d 269, 280 (7th Cir. 2007).

Swanson has already filed a brief on remand, arguing that he is entitled to relief from his sentence. The brief is neatly typed, articulate and supported by numerous exhibits. Having had the opportunity to consider this court’s previous opinion and the Seventh Circuit’s order on remand, Swanson cannot credibly argue that the remaining issues are overly complex. Indeed, the brief filed by Swanson demonstrates that he (1) understands those issues and (2) has the ability to marshal legal authorities and facts in support of his request for relief. Court records further confirm that Swanson is not a novice, having filed at least four *pro se* actions for collateral review of his underlying conviction and sentence. He has also pursued multiple appeals to the Seventh Circuit. Based on this record, the court concludes that the appointment of counsel is neither necessary for this case to proceed nor required by interests of justice. Accordingly, his motion for appointment of counsel will be denied.

ORDER

IT IS ORDERED that:

1. Petitioner Michael Swanson’s motion for an extension of time to reply (Dkt. # 48) and his motion for leave to supplement his brief with

additional authority (Dkt. # 49) are GRANTED. Swanson shall file his reply and any additional authority no later than August 9, 2013.

2. Swanson's motion for appointment of counsel (Dkt. # 47) is DENIED.

Entered this 12th day of July, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge